

HOUSE No. 15

Accompanying the seventh recommendation of the Office of the Inspector General (House, No. 8).
State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

AN ACT RELATIVE TO PUBLIC CONSTRUCTION THRESHOLDS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 44A of chapter 149 of the General Laws as appearing in the 2006 Official Edition, is
2 hereby amended by striking out subsection (2) and inserting in place thereof the following
3 subsection:—

4 (2)(A) Every procurement for the construction, reconstruction, installation, demolition,
5 maintenance or repair of any building by a public agency estimated to cost less than \$5,000 shall
6 be obtained through the exercise of sound business practices. The public agency shall make and
7 keep a record of each such procurement. Said record shall at a minimum include the name and
8 address of the person from whom the services were procured and the price.

9 (B) Every contract for the construction, reconstruction, installation, demolition, maintenance
10 or repair of any building by a public agency estimated to cost not less than \$5,000 but not more
11 than \$10,000 shall be awarded to the responsible person to perform the contract at the lowest
12 written price quotation; provided however that the public agency shall seek written price
13 quotations from no fewer than 3 persons customarily providing the work for which the contract is
14 being made available. When seeking written quotations the public agency shall make and keep a
15 record of the names and addresses of all persons from whom price quotations were sought, the
16 names of all persons submitting price quotations and the date and amount of each price quotation.
17 Written price quotations submitted in accordance with this subsection do not require bid deposits.

18 (C) Every contract for the construction, reconstruction, installation, demolition, maintenance
19 or repair of any building estimated to cost not less than \$10,000 but not more than \$25,000 shall
20 be awarded to the responsible person offering to perform the contract at the lowest price. The
21 public agency shall make public notification of the contract and shall seek written responses from
22 persons who customarily perform such work. The public notification shall include a scope of
23 work statement that defines the work to be performed and provides potential responders with

24 sufficient information regarding the objectives and requirements of the public agency and the
25 time period within which the work is to be completed. For purposes of this subsection “public
26 notification” shall include, but not necessarily be limited to, posting no less than 2 weeks before
27 the time specified in the notification for the receipt of responses, the contract and scope of work
28 statement on the website of the public agency, if any, and either on the COMPASS system, so-
29 called, or in the central register established under section 20A of chapter 9 and in a conspicuous
30 place in or near the primary office of the public agency. Written price responses submitted in
31 accordance with this subsection do not require bid deposits.

32 (D) Every contract for the construction, reconstruction, installation, demolition, maintenance
33 or repair of any building by a public agency estimated to cost more than \$25,000 but not more
34 than \$100,000 shall be awarded to the lowest responsible and eligible bidder on the basis of
35 competitive bids publicly opened and read in accordance with the procedure set forth in said
36 section 39M of said chapter 30. The term "pumping station" as used in this section shall mean a
37 building or other structure which houses solely pumps and appurtenant electrical and plumbing
38 fixtures.

39 (E) Every contract for the construction, reconstruction, installation, demolition, maintenance
40 or repair of any building by a public agency estimated to cost more than \$100,000, except for a
41 pumping station to be constructed, reconstructed, installed, demolished, maintained or repaired as
42 an integral part of a sewer construction or water construction project bid under the provisions of
43 section 39M of chapter 30, shall be awarded to the lowest responsible and eligible general bidder
44 on the basis of competitive bids in accordance with the procedure set forth in section 44A to 44H
45 inclusive.

46 (F) When the general court has approved the use of an alternative mode of procurement of
47 construction for a project pursuant to section 7E of chapter 29, the awarding authority responsible
48 for procuring construction services for the project shall follow the policies and procedures of this
49 section and of section 44B to 44H, inclusive, to the extent compatible with the mode of
50 construction procurement selected.

51 (G) Notwithstanding paragraph (E), a public agency may undertake the procurement of
52 modular buildings in accordance with section 44E. A public agency may procure site work for
53 modular buildings, including but not limited to, construction of foundations, installations, and
54 attachment to external utilities, or any portion of site work, either in combination with the
55 procurement of modular buildings pursuant to section 44E or on the basis of competitive bids
56 pursuant to paragraph (E). Notwithstanding the paragraph (E), a public agency may procure

- 57 energy management services in accordance with section 11C of chapter 25A and regulations
58 promulgated thereunder.